

Ninth Circuit decision upholding the Arizona law

HB 496

EXHIBIT 5 BUH
DATE 2-17-09
HB 496

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiffs, various business and civil-rights organizations, challenged the decision entered by the United States District Court for the District of Arizona that held that the Legal Arizona Workers Act (Act), Ariz. Rev. Stat. §§ 23-211 to - 216, was not preempted by the federal Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C.S. §§ 1324a-1324b.

OVERVIEW: Plaintiffs brought the actions against 15 county attorneys of the state, the governor, the state Attorney General, the state registrar of contractors, and the director of the state revenue department (collectively defendants). They alleged that the Act was expressly and impliedly preempted by IRCA. They also alleged that the Act violated employers' rights to due process by denying them an opportunity to challenge the federal determination of the work-authorization status of their employees before sanctions were imposed. The district court held that the law was not preempted. The main argument on appeal was that the law was expressly preempted by the federal immigration law provision preemption state regulation other than through licensing and similar laws. The appellate court held that the district court correctly determined that the Act was a licensing law within the meaning of the federal provision, and therefore was not expressly preempted. The court also held that the Act could and should be reasonably interpreted to allow employers, before any license could be adversely affected, to present evidence to rebut the presumption that an employee was unauthorized.

OUTCOME: The appellate court affirmed the district court's decision.

Why take steps to stop Illegal immigration?

Criminal Activity:

In April 2005, the GAO released a report on a study of 55,322 illegal aliens incarcerated in federal, state, and local facilities during 2003. It found the following:

Of the 55,322 illegal aliens studied, researchers found that they were arrested a total of 459,614 times, averaging about 8 arrests per illegal alien.

- They were arrested for a total of about 700,000 criminal offenses, averaging about 13 offenses per illegal alien.
- 49% had previously been convicted of a felony, 20% of a drug offense; 18% a violent offense, and 11%, other felony offenses.
- 81% of the arrests occurred after 1990
- 56% of those charged with a reentry offense had previously been convicted on at least 5 prior occasions.
- Defendants charged with unlawful reentry had the most extensive criminal histories. 90% had been previously arrested. Of those with a prior arrest, 50% had been arrested for violent or drug-related felonies.
- **GANGS:** The leadership of the Columbia Lil' Cycos gang, which uses murder and racketeering to control the drug market around L.A.'s MacArthur Park, was about 60 percent illegal in 2002, says former assistant U.S. attorney Luis Li. Francisco Martinez, a Mexican Mafia member and an illegal alien, controlled the gang from prison, while serving time for felonious reentry following deportation.

In any case, with 267,000 illegal aliens incarcerated, as of 2005, just the incarceration costs at \$25,000 per inmate per year is **\$6.7 BILLION per year**.

Illegal Immigration Impacts Education:

In the 2004/5 school year, Texas had about 690,000 ESL students. Nationally, there are an estimated 5.1 million ESL students speaking 145 languages. 80% of ESL students speak Spanish. If 90% of the ESL students are children of illegal aliens then **the education costs for children of illegal aliens is about \$34.5 billion per year**.

<http://www.usillegalaliens.com/>

EXHIBIT

DATE

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OMB No. 1615-0047; Expires 06/30/09

**Form I-9, Employment
Eligibility Verification**

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):

- ☐ A citizen or national of the United States
☐ A lawful permanent resident (Alien #) A _____
☐ An alien authorized to work until _____

(Alien # or Admission #) _____

Employee's Signature

Date (month/day/year)

Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature

Print Name

Address (Street Name and Number, City, State, Zip Code)

Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)	
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.		
Document Title: _____	Document #: _____	Expiration Date (if any): _____
I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.		
Signature of Employer or Authorized Representative		Date (month/day/year)

LISTS OF ACCEPTABLE DOCUMENTS

LIST A Documents that Establish Both Identity and Employment Eligibility	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Eligibility
1. U.S. Passport (unexpired or expired)		1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		1. U.S. Social Security card issued by the Social Security Administration (<i>other than a card stating it is not valid for employment</i>)
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address		2. Certification of Birth Abroad issued by the Department of State (<i>Form FS-545 or Form DS-1350</i>)
3. An unexpired foreign passport with a temporary I-551 stamp		3. School ID card with a photograph		3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. An unexpired Employment Authorization Document that contains a photograph (Form I-766, I-688, I-688A, I-688B)		4. Voter's registration card		4. Native American tribal document
		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (<i>Form I-197</i>)
		6. Military dependent's ID card		6. ID Card for use of Resident Citizen in the United States (<i>Form I-179</i>)
		7. U.S. Coast Guard Merchant Mariner Card		
		8. Native American tribal document		7. Unexpired employment authorization document issued by DHS (<i>other than those listed under List A</i>)
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer		9. Driver's license issued by a Canadian government authority		
		For persons under age 18 who are unable to present a document listed above:		
		10. School record or report card		
		11. Clinic, doctor or hospital record		
		12. Day-care or nursery school record		

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)